IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable

Case no: **6342/2024**

In the matter between:

SHADRACK SIBIYA Applicant

and

PATRICIA MORGAN-MASHALE Respondent

Neutral citation: *Sibiya v Morgan-Mashale* (6342/2024) [2025] ZAFSHC 232 (8 August 2025)

Coram: Daffue J

Heard: 17 April 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 8 August 2025.

Summary: Defamation – application proceedings – to obtain declaratory and mandatory relief by way of final interdict and an apology – defences raised, to wit repetition of information in public domain, reasonable publication and truth and public interest – discretion of the court and factors taken into account – rule *nisi* discharged.

ORDER

The rule *nisi* issued on 11 November 2024, extended from time to time, is discharged with costs, inclusive of the costs of respondent's counsel on scale B.

JUDGMENT

Daffue J:

Introduction

[1] This is the extended return date of a rule *nisi* issued on 11 November 2024. The application is about the alleged defamation by a former employee of the South African Police Service (SAPS) of a senior SAPS police officer. The alleged defamatory statements were posted on social media platforms. Two particular issues concerned the former employee. Firstly, the crime scene where a national soccer star, the late Senzo Meyiwa was killed, the investigations pertaining to the killing and the evidence in the murder trial. Secondly, the alleged receipt of bribe money by the applicant from, or on behalf of, the infamous Mr Louis Liebenberg.

The parties

[2] The applicant is the SAPS' Deputy National Commissioner: Crime Detection, Lieutenant General Shadrack Sibiya, who brought the application in his personal capacity.

[3] The respondent is Ms Patricia Morgan-Mashale, an adult female who describes herself as a whistleblower as defined in the Protected Disclosures Act 26 of 2000 (the Disclosures Act), presently staying in undisclosed premises. She was previously employed as an administrative clerk in the SAPS, but dismissed in circumstances dealt with later when an evaluation of the evidence is considered.

Summary of the relief granted on 11 November 2024

[4] On 11 November 2024 and whilst doing urgent court duty, I considered the applicant's *ex parte* application brought on an urgent basis. I place on record that I was prepared to hear the matter insofar I was *prima facie* of the view that there was no reason why the applicant should submit himself to assaults on his dignity until the matter was eventually heard. It is indeed correct that the applicant intended to obtain an *interim* interdict pending finalisation of the application. However, as I was not satisfied with the manner in which the notice of motion was drafted, I suggested changes. Unfortunately for the applicant, the order that was eventually issued did not provide for an *interim* interdict. Paragraph 3 of this order reads as follows:

'Pending the return date and finalisation of the matter, paragraphs 3.2, 3.3 and 3.4 (including sub-paragraphs where relevant) shall operate as an interim interdict immediately upon the granting of the Order.'

The order did not contain paragraphs 3.2, 3.3 and 3.4 as is the case with the notice of motion. Therefore, the respondent did not have to comply with any terms of the rule *nisi* pending the return date. I shall deal with this issue later herein when I deal with the applicant's allegations pertaining to contempt of court.

[5] I confirm that a rule *nisi* was issued with return date 5 December 2024, calling upon the respondent to advance reasons why the following order should not be made final:

a. that the allegations contained in the statements by the respondent on social media (the Impugned Statements) be declared unlawful and defamatory, alternatively that these were falsely made with the intention to injure the applicant and in the further alternative, that these violated the applicant's right to dignity;

b. that the respondent be directed to permanently retract and/or remove and/or delete the Impugned Statements within 24 hours of receipt of the order from the social media platforms, Facebook and Twitter/X under her username;

c. that the respondent be interdicted from publishing or causing to be published any further defamatory statements similar to that of the Impugned Statements;

d. that the respondent be ordered to publish within 24 hours from the granting of the final relief an apology in accordance with the proposed wording attached as an annexure to the notice of motion;

e. that the respondent be ordered to pay the costs of the application on an attorney and client scale.

[6] The Supreme Court of Appeal (the SCA) confirmed in *Economic Freedom Fighters and Others v Manuel* (*EFF v Manuel*)[1] the appropriateness of motion procedure for interim or final interdicts on an urgent basis to prevent the publication of defamatory statements. I quote:

'There is, of course, no problem with persons seeking an interdict, interim or final, against the publication of defamatory statements proceeding by way of motion proceedings, on an urgent basis, if necessary. If they satisfy the threshold requirements for that kind of order, they would obtain instant, though not necessarily complete, relief.'

[7] I was satisfied at the stage when I granted the rule *nisi* that a proper case for relief had been established. I shall deal hereunder with the requirements for a final interdict in which case *EFF v Manuel* will be referred to again.

The alleged contempt of court and proceedings prior to the final hearing

[8] On the return day of the rule *nisi*, to wit 5 December 2024, a colleague extended the rule to 20 February 2025. On 13 December 2024 the applicant filed an amended notice of motion and attached thereto a supplementary founding affidavit, seeking an order that the respondent be declared to be in contempt of court, relying *inter alia* on the respondent's further posts and her allegations made in a podcast pursuant to the order granted on 11 November 2024.

[9] On the extended return date, to wit 20 February 2025, serious discussions between applicant's counsel and me pursued as the applicant moved for an order that the respondent be declared to be in contempt of court. I was satisfied that no case had been made out for contempt of court. The respondent did not breach the order issued on 11 November 2024 as no *interim* interdict was issued, bearing in mind the wording of the order and the discussion under the previous heading. I may just mention that the applicant's attorneys received the court order immediately after it had been issued. They should have detected the mistake and approached me in chambers to amend the order, which they failed to do.

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[1] *Economic Freedom Fighters and Others v Manuel* [2020] ZASCA 172; [2021] 1 All SA 623 (SCA); 2021 (3) SA 425 (SCA) para 111.

[10] The respondent has taken issue with the fact that I was prepared to grant an order on an urgent basis and *ex parte*. I was satisfied at the time that the applicant mentioned the respondent's last known address in the papers, but also that her physical address at the time was not known as, on her own version, she was housed in a so-called safe house at an undisclosed address. The respondent was therefore not physically reachable and consequently, the notice of motion could not have been served upon her in terms of the rules of court prior to the hearing on 11 November 2024. I accept that I could have insisted that the notice of motion be published on the social media platforms on which the respondent was and is active, but decided against that, bearing in mind my view that a rule *nisi* should be issued. I deny that I mentioned at any stage during oral argument that I was misled by the applicant as stated by the respondent.

[11] On 20 February 2025 the respondent appeared in person. She required an opportunity to file an answering affidavit. I extended the rule *nisi* to 17 April 2025 and made appropriate further orders pertaining to filing of affidavits, heads of argument and costs. I also ordered the respondent, to which she had no objection, to refrain from publishing any material in respect of the applicant on any social media platforms. I granted the order refraining the respondent to publish further material regarding the applicant as an *interim* measure pending the outcome of the application.

[12] I wish to record that at the hearing on 17 April 2025 the applicant's counsel did not pursue their argument that the respondent should be convicted for contempt of court.

The applicant's case

[13] Although the applicant accepted that the respondent as a whistleblower may be entitled to certain disclosures, he submitted that he is entitled to protect his good name, reputation and integrity. I shall deal with the Impugned Statements during the evaluation of the evidence, but it is the applicant's case that they are indeed defamatory and false.

The defences

[14] It is the respondent's case that, as a whistleblower and human rights defender, she is entitled to report matters regarding corruption or human rights' violations to the

particular authorities such as the Independent Police Investigation Directorate (IPID), the National Police Commissioner, the Minister of Police, as well as Parliament's Portfolio Committee. She did so in these cases, so she alleged, where after she shared the information with her followers – the public – on social media. According to her, the information posted was already in the public domain. Therefore, she submitted, she merely repeated the information. She insisted that the information conveyed by her on social media are the truth and in the public interest; also that she had no intention to defame the applicant.

Legal framework

[15] Section 16 of the Constitution guarantees the right of freedom of expression and speech. Human dignity is also guaranteed as specifically provided in s 10 of the Constitution. Although the SCA stated in *Herbal Zone v Infitech Technologies*[2] *(Herbal Zone)* that freedom of speech carries greater weight than in the past, this does not mean that the right to dignity and reputation of another person should not be considered at all. *In casu*, the applicant is in principle entitled to the protection of his dignity and reputation. In *O-Keeffe v Argus Printing and Publishing Company Co Ltd & Another*[3] Watermeyer AJ quoted De Villiers, the author of *Injuries,* with approval. The author defined dignity as a 'valued and serene condition in [a person's] social or individual life which is violated when [they are], either publicly or privately, subjected by another to offensive and degrading treatment, or when [they are] exposed to ill-will, ridicule, disesteem or contempt'. Currie and De Waal[4] are of the view that human dignity is 'perhaps the pre-eminent value.' This submission is in line with the Constitutional Court's approach in *Christian Education in South Africa v Minister of Education*[5] where the court referred to the 'central constitutional value of dignity'.

[16] In the event of conflict between two competing constitutional rights, a balancing act must be exercised. No right is absolute and although the right to human dignity is regarded as a central value and even a pre-eminent value, the facts and circumstances in each case need to be considered to establish whether the right to

[2] *Herbal Zone v Infitech Technologies* [2017] ZASCA 8 para 36.
[3] *O-Keeffe v Argus Printing and Publishing Company Co Ltd & Another* 1954 (3) SA 244 (CPD) at 247.
[4] I Currie and J De Waal *The Bill of Rights Handbook* 5th ed at 272.
[5] *Christian Education in South Africa v Minister of Education* 2000 (4) SA 757 (CC) para 15.

freedom of expression should be limited. More about this during the evaluation of the evidence.

[17] The requirements to be successful in a claim based on defamation have been authoritatively restated by the Constitutional Court in *Khumalo and Others v Holomisa* as follows:[6]

'[18] At common law, the elements of the delict of defamation are –
(a) the wrongful and
(b) intentional
(c) publication of
(d) a defamatory statement
(e) concerning the plaintiff.'

[18] When it is alleged by the claimant that the published statement is defamatory *per se*, a two-stage inquiry is conducted. During the first stage it has to be established what is the natural and ordinary meaning of the statement and once this is established, whether the meaning thereof is defamatory.[7] The Constitutional Court stated in *Le Roux and Others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae)* (*Le Roux v Dey)* that the court must objectively determine what meaning the reasonable reader of ordinary intelligence would attribute to the impugned statement, whether express or implied. During the second stage of the inquiry, the court considers whether the defamatory statement is likely to injure the good esteem in which the claimant is held by the reasonable or average person to whom publication occurred.[8]

[19] Once it has been shown that defamation exists *prima facie*, the *onus* shifts to the other party to rebut the presumption of unlawfulness by successfully demonstrating that their conduct was neither wrongful, nor intentional, or that they are entitled to rely on any other competent exculpatory defence available to them. This has been authoritatively laid down in *Le Roux v Dey*.[9]

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[6] *Khumalo and Others v Holomisa* 2002 (5) SA 401 (CC) para 18.
[7] *Le Roux and Others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae)* [2011] ZACC 4; 2011 (3) SA 274 (CC) para 89.
[8] *Ibid* para 91.
[9] *Ibid* para 85.

[20] The respondent relies on certain defences as mentioned above. I repeat these. Firstly, she denies that she has defamed the applicant. Furthermore, the allegations contained in her posts on social media were already public knowledge, *ie* she merely repeated what was in the public domain. The publication was also reasonable and in the public interest. She also insists that the allegations are the truth, stating there are people who can confirm the truthfulness of her allegations and who would like to testify in support of her defence, but who fear for their lives.

[21] In *Manuel v Economic Freedom Fighters and Others*[10] (*Manuel*) the High Court considered the defence of reasonable publication by a whistleblower, but rejected it in the defamation context in express terms. It started its discussion in the following words:

'The respondents contend that their conduct was reasonable because it acted in a manner akin to a whistle-blower. They were given information from a confidential source, which they accepted to be true, and had no reason to doubt. The Protected Disclosures Act encourages people to report serious wrongdoing in their workplace by protecting employees who want to 'blow the whistle'. The Act lists prescribed ways of reporting wrongdoing and does not protect people who publish their unsubstantiated defamatory disclosures worldwide.'

[22] It does not appear from the papers when the respondent was dismissed. The various disclosures do not qualify as protected disclosures as defined in the Disclosures Act.[11] Section 9 of this Act might have been relied upon as it deals with general protected disclosures. However, it is not the respondent's case that she was still an employee at the stage when any of the Impugned Statements were published. In any event, I am in agreement with the *Manuel* judgment that whistleblowers should not be allowed to publish their unsubstantiated defamatory disclosures worldwide.

[23] Although *Manuel* was overruled on appeal pertaining to the issue of damages, the SCA, after dealing extensively with the defence of reasonable publication, concluded as follows:

'For those reasons, whether the defence of reasonable publication is approached as a denial of publication *animus iniuriandi*, or as a development of the common law along the lines

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[10] *Manuel v Economic Freedom Fighters and Others* (13349/2019) [2019] ZAGPJHC 157; [2019] 3 All SA 584 (GJ); 2019 (5) SA 210 (GJ) (30 May 2019) para 61; and see also paras 62-70.

[11] See ss 5-9 of the Protected Disclosures Act 26 of 2000, read with the definition of protected disclosures.

indicated in *Bogoshi*, it could not succeed and there is no reasonable prospect of the judge's conclusion to that effect being overturned.'[12]

[24] It is no defence to rely on the earlier publication of defamatory statements by another and a mere repetition of what is already in the public domain. In *Tsedu and Others v Lekota and Another*[13] (*Tsedu*) the SCA reaffirmed that someone that publishes a defamatory statement that was made by another is as much the publisher of the defamation as the original publisher. Although the repetition rule still applies, as indicated, it is subject to exceptions. The court continued in *Tsedu* as follows:[14]

'There are, of course, circumstances in which the publication of even false defamatory matter is protected – for example, when it repeats what was said in parliament or in a court of law, or if "upon a consideration of all the circumstances of the case, it is found to have been reasonable to publish the particular facts in the particular way and at the particular time" – and the fact that the defamatory matter is mere repetition might in some cases be relevant to whether a defence of that kind will be allowed.' (Emphasis added)

[25] The applicant elected to approach the court on motion instead of instituting action procedure. Save for the declaratory orders sought, he also seeks an apology or retraction and even prescribed to the court the wording of the apology and where and how it should be published.

[26] An interdict is not a remedy to deal with past unlawful action. In terms of this remedy an order is sought against another to refrain them from acting in a specific manner, or directing them to perform in a particular manner. Thereby, protection is sought against an ongoing unlawful interference, or the threatened interference of someone's rights.[15] *In casu* the applicant seeks both a final prohibitory as well as a mandatory interdict. A litigant must prove the following three requirements to obtain a final interdict, to wit (a) a clear right, (b) an injury has actually been committed or is reasonably apprehended and in this regard the injury must be a continuing one as the court will not grant an interdict in respect of an act already committed; and (c) the absence of any other satisfactory remedy. The court has a limited discretion to refuse a final interdict.

[12] Footnote 1 para 86.
[13] *Tsedu and Others v Lekota and Another* 2009 (4) SA 372 (SCA) para 5.
[14] *Ibid* para 6.
[15] Van Loggerenberg *et al*, *Erasmus Superior Court Practice* RS 17, 2021, D6 - 1.

[27] In *NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators*[16] (*NBC Holdings*) the SCA stated the following:

'[29] In principle there has never been an objection to pursuing a claim for an interdict against the future publication of defamatory matter by way of an urgent application. This court reaffirmed that in *EFF v Manuel* in saying: . . .

However, the entitlement to proceed in that way is constrained by the fact that in motion proceedings, where the issue is whether the defendant has a defence to a claim based on defamation, it cannot be decided on motion if there is a dispute as to the applicant's right to that relief. As Greenberg J said:

"... if the injury which is sought to be restrained is defamation, then he is not entitled to the intervention of the Court by way of interdict, unless it is clear that the defendant has no defence."

In *Hix Networking* the court emphasised that this did not mean that the mere ipse dixit of the respondent would suffice to establish a defence. It must be based on evidence.

[30] A respondent wishing to resist an interdict against the future publication of defamatory material can do so by presenting evidence that provides a sustainable foundation for a defence recognised in law. This may be done not only by way of direct evidence, but also by making the case that at a trial further evidence could be procured and would be available to sustain the defence. A plausible claim by a respondent that, with the advantage of discovery and being able to subpoena witnesses and documents, they will be able at trial to produce evidence to sustain their defence, will ordinarily suffice to establish the requisite foundation for the defences raised. This is well-illustrated by the recent judgment of this court in Malema v Rawula where, after analysing the evidence, Schippers JA concluded that:

"These facts comprise not only direct information placed before the court, but material showing other information not in his control but potentially available at a trial in due course, such as the EFF's financial records and documents relating to receipt of VBS funds. All these factors must be weighed up in order to decide whether there is a dispute of fact regarding the existence of a defence."' (Emphasis added and footnotes omitted)

[28] Plewman JA, writing for a unanimous bench in *Hix Networking Technologies v System Publishers (Pty) Ltd and Another*,[17] concluded that 'cases involving an attempt to restrain publication must be approached with caution' and that 'freedom of speech is a right not to be overridden lightly.' I accept that the facts in that case are not on par with the facts *in casu*. There, the SCA dealt with an order of the court *a quo*, dismissing an application for an *interim* interdict restraining the publication by a publisher.

[16] *NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators* [2021] ZASCA 136; [2021] 4 All SA 652 (SCA) paras 29 and 30; the *dictum* by Greenberg J relied upon is from *Heilbron v Blignaut* 1931 WLD 161 at 168-169.

[17] *Hix Networking Technologies CC v System Publishers (Pty) Ltd and Another* [1996] ZASCA 107; 1997 (1) SA 391 (SCA); [1996] 4 All SA 675 (A) at 402C-F.

[29] In *Herbal Zone v Infitech Technologies*[18] (*Herbal Zone*) the SCA confirmed the principle that an interdict to prevent a party from making defamatory statements in the future is 'only infrequently granted' as 'it impinges upon that party's constitutionally protected right to freedom of speech.' The court recognised that in our constitutional era freedom of speech carries greater weight than it had in the past.[19]

[30] In *Malema v Rawula*[20] the SCA had another opportunity to deal with disputes in motion procedure dealing with claims based on defamation. The court distinguished the facts in *EFF v Manuel* with those in that matter. It held that Mr Rawula, the respondent, 'laid a supportable foundation that the defence of truth and public interest was available to be pursued.'[21] The court referred to this defence and the potential that evidence may be presented to a trial court in substantiation of the defence in the following words:[22]

'The defence of truth and public interest is founded on the recognition of a right to publish a defamatory statement which is true, where the publication is in the public interest. The facts put up by the respondent demonstrated that the defence was available to be pursued. These facts comprise <u>not only direct information</u> placed before the court, <u>but material showing other information not in his control but potentially available at a trial in due course</u>, such as the EFF's financial records and documents relating to receipt of VBS funds. All these factors must be weighed up in order to decide whether there is a dispute of fact regarding the existence of a defence. Since *Heilbron*, the position has been that a final interdict for defamation cannot be granted unless a respondent has no defence.' (Emphasis added and footnotes omitted.)

[31] In *Malema v Rawula* the court also considered the risk of future publication of defamatory statements and concluded as follows:[23]

'Further, as this Court has affirmed in *Herbal Zone*, and *Tau v Mashaba*, an interdict is always directed at future conduct. If there is no risk of future re-publication by the respondent – as the appellant seems to have accepted – an interdict will not be granted, because there is nothing left to restrain and no risk of future injury. The high court rightly concluded that the appellant failed to make out a case for this relief.' (Footnotes omitted.)

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[18] Footnote 2 para 36.
[19] *Ibid*, para 40.
[20] *Malema v Rawula* [2021] ZASCA 88.
[21] *Ibid* para 39.
[22] *Ibid* para 64.
[23] *Ibid* para 65.

[32] The SCA confirmed in *EFF v Manuel*[24] Mr Manuel's right to an interdict, although it held that the High Court erred in granting damages. Although an apology is an appropriate remedy for an actionable injury to a person's dignity, its forms an inextricable part of damages and motion proceedings are not suited to prosecute such claims.[25]

[33] In *Tau v Mashaba and Others (Tau)*[26] the SCA criticised the procedure to seek a retraction and an apology on motion. It stated the following:

'An order to retract the initial statements, to issue an unconditional apology for them and to ensure publication of the retraction and apology, presupposes a finding that the initial statements were defamatory of the respondent. That would involve a final determination of the rights of the parties, which has to be made in the defamation action. Further, if such an order were to be executed, it could not be undone: the notion of an interim retraction or apology is untenable.'

[34] Relying on *NBC Holdings* and *Tau*, the SCA recently concluded as follows in *IRD Global Limited v The Global Fund to fight AIDS, Tuberculosis and Malaria*:[27]

'It is now settled law that an apology or a retraction may serve the same purpose as an award of damages in a defamation action or may be ordered in conjunction with an award of damages.'

It also made the following point:[28]

'. . . A trial is necessary to determine the veracity of the alleged defamatory statements and thereafter an award can be made consisting of an apology, a monetary amount, a retraction or a combination of same. Recently, in *Malema v Rawula*, this Court confirmed that awards of damages may not be claimed in motion proceedings.'

Evaluation of the evidence

[35] The respondent filed her answering affidavit with four annexures, duly marked, with the court on 28 March 2025 as directed on 20 February 2025. She failed to serve her answering affidavit on the applicant's attorneys before filing same with the court. This answering affidavit was only served on the applicant's attorneys by email on 1

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[24] Footnote 1 para 111 quoted above.

[25] *Ibid* paras 91 – 127 in respect of unliquidated damages in general & paras 128 – 130 in respect of an apology; *IRD Global Limited v The Global Fund to fight AIDS, Tuberculosis and Malaria* [2024] ZASCA 109; 2025 (1) SA 117 (SCA).

[26] *Tau v Mashaba and Others* [2020] ZASCA 26; 2020 (5) SA 135 (SCA) para 17.

[27] *IRD Global Limited v The Global Fund to fight AIDS, Tuberculosis and Malaria* [2024] ZASCA 109; 2025 (1) SA 117 (SCA) para 24.

[28] *Ibid* para 26; the reference is to *Malema v Rawula* [2021] ZASCA 88 para 26.

April 2025. The respondent failed to attach the annexures to this affidavit. When this was pointed out to her attorneys, the annexures were sent to the applicant's attorneys on 4 April 2025, but these annexures were apparently not properly marked. The applicant was advised to file a 'conditional' replying affidavit which was done. The applicant submitted that the respondent's affidavit should be regarded as *pro non scripto* and that I should disregard it *in toto*. He responded fully to the answering affidavit in the replying affidavit, but if it was felt that a further opportunity should be granted to file a supplementary replying affidavit, such relief should have been requested. This was not done. I am satisfied that notwithstanding the improper procedure followed, all available material which the parties intended to place before me, served before me.

[36] I accept that people serving the public such as the applicant should accept that they may be fiercely criticised by others from time to time. They are not immune to criticism. However, criticism and fair comment must be considered objectively and based on the facts in each particular case. It is just too easy for people that are active on social media to insult others and/or to attack them in a vitriolic manner. Often, these social media users have thousands and even millions of followers who can access the publications within seconds or minutes. I am also mindful of the ever-increasing tendency by some social media users to use the various platforms to crucify others. Courts should be wary of this. In the preparation of this judgment I take cognisance hereof.

[37] I may add that the respondent does not rely on fair comment as a defence and consequently, I do not intend to consider this defence. It is her case that the information posted by her were already in the public domain. Further, that the posts were the truth and in the public interest. She submitted that she will be able to prove the veracity of the statements during a hearing in due course. I indicated earlier that the respondent could not rely on the Disclosures Act as a defence. However, as a concerned citizen of this country she has a right to freedom of speech entitling her to reasonable publication of the truth if it is in the public interest. More about this later. I shall also keep in mind the balancing approach in dealing with the constitutional rights of freedom of speech on the one hand and dignity on the other as mentioned above.

[38] The applicant elected to approach the court for a final interdict, seeking declaratory as well as mandatory relief. The *Plascon-Evans* principles apply. If in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the latter, justify such an order. I am also mindful of the following oft-quoted *dictum* of the SCA in *National Director of Public Prosecutions v Zuma:*[29]

'Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities.'

[39] In order to consider the evidence, the submissions of the parties and the application of the legal principles, I deem it appropriate to quote some of the respondent's posts *verbatim.* In the post of 6 March 2024 she stated:

'I got feedback from Masemola [clearly a reference to General Fannie Masemola] regarding the new evidence. He appointed Shadrack Sibiya to meet with me. Now why would I want to meet with Shadrack Sibiya, who tampered with the crime scene in the first place? Masemola dropped the ball, I know what to do...'

[40] In another post on 27 September 2024 she claimed the following:

'Shadrack Sibiya called Warrant Officer Makhubo to the crime scene on the night Senzo was killed . . . Makhubo assessed the crime scene, spoke with a few witnesses and gave his verdict to Shadrack [the applicant]. Shadrack then called him aside and asked him to "reconstruct" the crime scene. Makhubo refused to cook and Shadrack chased him away. . . Makhubo opened docket 375, defeating the ends of justice and perjury, including Shadrack and Gininda as suspects. Shortly thereafter, Makhubo is arrested on charges of robbery, kidnapping and extortion. After 3 years the court acquitted him of all malicious charges. . . .

Shadrack made one very big mistake, he undermined Makhubo's integrity...

Docket 375 will be placed on the roll, no matter what and Shadrack and Gininda will stand in the dock as suspects....it may not be this year or even next year, but as I always say, "crime doesn't expire".'

[41] As indicated in the posts quoted above, the respondent *inter alia* posted that the applicant had tampered with the crime scene where the late Senzo Meyiwa was killed. She relied on what was in the public domain, but also the contents of docket

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[29] *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA) para 26.

number CAS375. She pleaded that she was struggling to obtain the docket, which is not a surprise as she is not entitled thereto. Furthermore, she stated that witnesses who can corroborate her version are afraid to testify in support of her defence. The respondent relies on the version of Warrant Officer Makhubo who opened docket CAS375/2014. Warrant Officer Makhubo has not filed a confirmatory affidavit in support of the respondent's version, but he is identified as the person who can confirm that he was instructed by the applicant to tamper with the aforesaid crime scene and when he refused to do so, he was chased away by the applicant. The respondent pointed out that the complaint giving rise to docket CAS375/2014 is *inter alia* that the applicant defeated the administration of justice. She also insisted in her posts that the applicant and another person will soon appear in court in this regard. I accept that this is hearsay evidence and should in normal circumstances be disallowed. More about this later.

[42] It is common cause that the applicant attended the aforesaid crime scene. On his own version as is apparent from the extracts of a Netflix documentary, he and his team 'rushed to the scene' and they *inter alia* cleared the scene. The applicant pointed out that there is no proof or any allegation that the respondent had perused the relevant docket. Also, none of the Netflix episodes relied upon demonstrate that the applicant tampered with the crime scene, or that he instructed someone else to tamper therewith. The applicant did not deny in any of his affidavits, firstly that he was on the crime scene, secondly that Warrant Officer Makhubo was there as well and that a docket was opened by him pertaining to defeating the ends of justice as alleged by the respondent.

[43] As mentioned, there is no evidence that the respondent personally inspected docket 375 referred to and on what information contained in the docket she relies. Furthermore, neither Warrant Officer Makhubo, nor anyone else filed confirmatory affidavits in support of her version.

[44] The second relevant issue is the alleged bribery. In two posts on social media on 30 October 2024 the respondent dealt with the relationship between the applicant and Mr Liebenberg. The one post reads as follows:

'He is named as one of the people who received large amounts of bribe money in return for not investigating the cases against Liebenberg. The cases has (sic) been delayed for 5 years because he was eating.
The top management of SAPS is rotten.'

[45] Another post reads as follows:
'Maj-General Shadrack Sibiya, Head of Detectives, is named as one of the people who received bribes from Louise Liebenberg in an affidavit by the ex wife of Liebenberg. That's the kind of management SAPS has employed, everyone has their fingers in the cookie jar.'
The respondent attached to her post a screenshot of an *interim* report following an insolvency enquiry in respect of the insolvent estate of Tariomix (Pty) Ltd, trading as Forever Diamonds and Gold, the company directly linked with the infamous Mr Louis Liebenberg and his wife. Clearly, the screenshot is of a report and not an affidavit. It reads as follows:
'5.5.6 Under these circumstances it is also important to consider the admittance by Mrs Liebenberg during her testimony, attached hereto as annexure "D" that payments were made to the following individuals:
5.5.6.1 Rejoice Zuma;
5.5.6.2 Mr Zuma;
5.5.6.3 Mr Ace Magashule;
5.5.6.4 Captain Mabena; and
5.5.6.5 Mr Sibiya of the South African Police Service.'

[46] The applicant explained that on 20 October 2024 he had a telephonic conversation with Mr Liebenberg, his present wife, Mrs Dezzi Liebenberg as well as the Liebenbergs' attorney. Mr Liebenberg informed him that his wife had made diary entries on his instructions which entries reflected the name of Mr Sibiya of SAPS. However, according to the applicant, Mr Liebenberg did not refer to him, but to a different Mr Sibiya. Consequently, the applicant recorded that there was no testimony that he had received any money from Mr Liebenberg. The respondent made the point in her answering affidavit that Mr Liebenberg was still in custody at the stage when the alleged telephonic conversation took place and during the time when the criminal case against him and his wife was still under investigation. Her response that the applicant's action is nothing but an interference with the criminal investigation appears to be valid, but there is no reason to deal with this aspect any further. However, I find it extremely disturbing that the applicant failed to obtain affidavits from the Liebenbergs to

exonerate him. If it is mere co-incidence that monies were paid to another Sibiya of SAPS, I would have expected the applicant, supported by the Liebenbergs under oath, to identify this Sibiya who is also a member of SAPS. Surely, no monies would be paid to bribe a person that could not be of any assistance to the Liebenbergs. This version, hearsay in its very nature, is rejected as untenable and far-fetched, if not false.

[47] I accept that the National Commissioner of Police, General Masemola, as well as Mr Ian Cameron, the chairperson of the Parliamentary Portfolio Committee on Police, to mention just two persons, are aware of the respondent's allegations against the applicant.

[48] The Impugned Statements are clearly defamatory in nature. These were posted on *inter alia* Facebook and Twitter/X. The respondent has about 101 000 followers on Facebook and 68 200 followers on Twitter/X according to the applicant's uncontested version. Notwithstanding receiving a letter of demand from the applicant's attorneys after the initial posts on 6 March 2024, the respondent continued posting statements a few months later. I accept that the Impugned Statements portray the applicant as a corrupt police official involved in bribery and corruption. He is portrayed as having requested a colleague to reconstruct the aforesaid crime scene, thereby defeating and/or attempting to defeat the ends of justice. Furthermore, he used his official position as one of the most senior police officers in the country to solicit bribes in order to prevent investigation into Mr Liebenberg's alleged criminal activities, thereby preventing possible criminal prosecution. The respondent did not deny that she posted the Impugned Statements relied upon by the applicant. Instead, she throughout insisted that as a whistleblower she was fully entitled to post the Impugned Statements as the information contained therein is the truth and in the public interest. Above all, according to her, the information was already public knowledge.

[49] The respondent failed to produce proper annexures and/or affidavits to confirm her version. Consequently, several of her allegations are largely based on hearsay, and/or repetition of third parties' allegations. In principle, these should be unsustainable in respect of the *Plascon-Evans* test, but as there is no doubt a dispute as to the applicant's right to relief, the words of Greenberg J, accepted with approval

in *NBC Holdings (Pty Ltd v Akani Retirement Fund Administrators*,[30] cannot be ignored. An interdict in defamation cases shall not be granted 'unless it is clear that the defendant has no defence'. I accept that the respondent's mere *ipse dixit* cannot be sufficient to establish a defence as it must be based on evidence that 'provides a sustainable foundation for a defence recognised in law'.[31] The SCA made it clear in *NBC Holdings* and *Malema v Rawula* that direct evidence may be provided, but also by making a case that further evidence could be procured at the trial and would be available to sustain the defence. In such a case, the trial judge would have the advantage of considering the evidence, bearing in mind discovery, that recalcitrant witnesses might be subpoenaed and after cross-examination of all witnesses. Much of the evidence that might possibly be relevant *in casu* is not under the respondent's control, but could potentially be available at a trial in due course. All these factors must be weighed up in order to decide whether there is a dispute of fact regarding the existence of a defence.

[50] The following facts are either common cause, or the allegations by the respondent have not been denied specifically:

a. notwithstanding a period in excess of ten years, the aforesaid murder trial of Senzo Meyiwa has not been concluded;

b. the applicant was one of the first SAPS members on the murder scene soon thereafter and he and his team cleaned the scene after their investigations;

c. Warrant Officer Makhubo was also at the murder scene at the same time;

d. Warrant Officer Makhubo is the complainant who opened the docket Cas375 and the applicant is one of the suspects;

e. Warrant Officer Makhubo is also afraid and fears for his life, finding himself in a safe house;

f. Mr Liebenberg has made payment to certain high profile individuals and the investigations pertaining to his alleged criminal activities have been ongoing for several years;

g. a person referred to as Sibiya in the employ of SAPS also received bribe monies from or on behalf of Mr Liebenberg;

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[30] *NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators* [2021] ZASCA 136; [2021] 4 All SA 652 (SCA).

[31] *Ibid* para 30; see also fn 20.

h. both the criminal trial relating to the death of Senzo Meyiwa and the allegations against Mr Liebenberg and his entities are highly debated and have been in the news, *ie* on television, radio programs and the written media, for several years;

i. the allegations pertaining to the applicant have been in the public domain prior to the publishing of the social media posts;

j. the respondent has been reporting maladministration in SAPS together with human rights' violations to the relevant authorities, including IPID, for more than 15 years and as a result of her reporting affecting and involving senior members of SAPS, she was dismissed.

[51] The application must be determined on the respondent's version of the facts together with any undisputed facts provided by the applicant, unless her version is so palpably false that it can be rejected on the papers. I mentioned *supra* the crucial issues raised by the respondent which have not been denied by the applicant and/or are indeed common cause.

[52] In my view, the public outcry referred to by the respondent in respect of both the aforesaid issues is such that it qualifies as an exception to the repetition rule.[32] A proper dispute has been raised pertaining to the applicant's right to an interdict.

[53] I conclude that the applicant has not proven the requisites for a final interdict. Firstly, although he has a right to protect his dignity and reputation, I am not satisfied that the applicant has suffered and will continue to suffer ongoing reputational harm if the interdict is refused and the rule *nisi* discharged. He has not proven the second requirement for a final interdict, to wit an injury actually committed and/or reasonably apprehended. The applicant has an alternative remedy. He can always issue summons to prove defamation and claim damages. The third requirement has not been proven.

[54] Although the SCA agreed in *EFF v Manuel*[33] with the High Court's findings and the conclusion that a final interdict was warranted in those circumstances, the facts in that case are clearly distinguishable from those herein. The SCA as well as the High Court dealt at length with reasonable publication as a defence in defamation matters.

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[32] *Tsedu and Others v Lekota and Another* 2009 (4) SA 372 (SCA) para 6.
[33] Footnote 1 para 111.

The courts held that the EFF's allegations pertaining to Mr Manuel were false. The political party representatives had no direct contact with their informant and the latter's suspicions were not investigated and consequently, the published information turned out to be false. The facts in this case are much more in line with those in *Malema v Rawula*.[34]

[55] Even if I was prepared to find that the applicant had proved the three requirements for a final interdict, which is not the case, I still would have refused to exercise my limited discretion against him. I have reason to believe that further evidence will eventually be procured if the dispute goes on trial which may have an important effect on the outcome of the case.

The request that the respondent be directed to publish an apology and retraction

[56] Having concluded that the applicant is not entitled to a final interdict, there is no reason to consider his request that the respondent be directed to publish an apology. I merely wish to record *ex abundante cautela* that even if I was prepared to grant declaratory and mandatory relief, I would have refused such request. An entitlement to an apology forms part of and is inextricably tied up with damages. Motion proceedings are not suited to prosecute such claims as clearly indicated in *EFF v Manuel*[35] and the other judgments referred to *supra*.

The costs

[57] The general rule is that costs should follow the event. There is no reason to depart from the rule. The respondent as the successful litigant is entitled to her costs of opposing the application.

Order

The rule *nisi* issued on 11 November 2024, extended from time to time, is discharged with costs, inclusive of the costs of respondent's counsel on scale B.

[redacted]

JP DAFFUE J

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[34] Footnote 20.

[35] Footnote 1 paras 91 – 127 in respect of unliquidated damages in general and paras 128 – 130 in respect of an apology; *IRD Global Limited v The Global Fund to fight AIDS, Tuberculosis and Malaria* [2024] ZASCA 109; 2025 (1) SA 117 (SCA).

Appearances

For applicant:	K Premhid, P Vabaza and I Macingwane (Pupil)
Instructed by:	Ian Levitt Attorneys c/o Lovius Block Inc Bloemfontein
For respondent:	T Mogwera
Instructed by:	Koenane Attorneys Bloemfontein